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The bill, however, should not have been dismissed against him, as he was a necessary party. He was not only mortgagor, but actual owner of the equity of redemption when the bill was filed.

The decree below dismissing the bill must be reversed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

Partnership—Assignment for Benefit of Creditors—Purchase on behalf of Another.—Where the surviving partner of an insolvent firm assigned certain lots of ground belonging to the firm for the benefit of its creditors, the heirs of the deceased partner cannot be made parties to a suit involving the title to the lots, on the ground of any relation of trust or confidence subsisting between them and the assignee: *Rothwell* vs. *Dewees.*

Where a party purchases property under the direction of, or on behalf of another, the purchase must be held to be in trust for the benefit of the principal, on repayment of the money advanced by the agent: *Id.*

Where two devisees or tenants in common hold under an imperfect title, and one of them buys in the outstanding title, such purchase will enure to their common benefit upon contribution made to repay the purchase-money: *Id.*

This rule is based upon a community of interest in a common title, creating such a relation of trust and confidence between the parties, that it would be inequitable to permit one of them to do anything to the prejudice of the other, in reference to the property so situated: *Id.*

The reason of this rule applies as forcibly to the husband of a tenant in common as to one of the immediate co-partners: *Id.*

Devise of Lands—Without Words of Limitation, gives only Estate for Life—Exceptions to this Rule—Ambiguity in a Will.—It is an established rule of the common law, that a devise of lands without words of limitation confers an estate for life only: *King* vs. *Ackerman.*

But because this rule generally defeated the intention of the testator, the Courts have been astute in finding exceptions to it: *Id.*

Where land is devised without legal words of limitation, and a provision is added that the devisee may do therewith as he pleases, a fee is presumed to have been intended: *Id.*

It is also well settled, that where a devisee whose estate is not de-

[1] From Hon. J. S. Black, to appear in Vol. 2 of his Reports.

fined is directed to pay debts, legacies, or a sum in gross, he takes a fee: *Id.*

This last rule, though founded on inference, is as technical and rigid in its application as that to which it is an exception; for Courts will not inquire into the relative value of the land and the charge, nor decide on the probability of the devisee being called on to pay the charge: *Id.*

Where a testator gives one piece of land to his son, with the privilege of doing therewith as he pleases, and makes another devise to the same son, without using those or any similar words, it does not follow that there was no actual intent to give a fee in the last-mentioned land: *Id.*

A Court may look beyond the face of the will, to explain an ambiguity as to the person or property to which it applies, but never for the purpose of enlarging or diminishing the estate devised: *Id.*

California Land Claims—Fraudulent Certificate—Presumption of Fraud in other Title Papers.—In a California land case, the production of a fraudulent and false certificate of approval, signed by the Governor and Secretary who signed the grant, and proved by the same witnesses in the same way that the grant was proved, affords (in the absence of explanatory evidence) strong ground for believing all the title papers to be fabricated: *United States* vs. *Galbraith.*

Where the date of a grant has been altered, while it was in the hands of the claimants, and is produced to the Court without evidence, to show how the alteration came to be made, this Court cannot confirm the title: *Id.*

The case of *United States* vs. *West's Heirs* reviewed, the facts stated from the original record, and all its features shown to be strikingly different from this case: *Id.*

The fact that an *espediente* is found among those indexed by Hartnell in 1847–8, is no evidence that it was made at the time of its date: *Id.*

Agent—Concealed Principal—Title to Goods as between the Real and Apparent Owner, and Purchaser from the latter—Burden of Proof.—A person residing in California employed an agent to contract for and superintend the building of a ship at New York. The agent was furnished with funds for the purpose, and specially directed by the principal to give himself out as the true owner, and to conceal the interest of the

principal. Accordingly, the agent made all contracts in his own name, and had the vessel registered as his own property. After she was finished, he sold her, and put the price in his pocket:—*Held*, That the principal's right in the vessel was gone, unless he could prove that the vendee had notice of his right before payment of the purchase-money: *Calais Steamboat Company* vs. *Scudder, Administrator of Van Pelt.*

As between the principal and agent themselves, the legal title of the latter could not avail him, except as a lien for his services and money advanced; but the rule is different as respects a third person who has bought in good faith and for a valuable consideration: *Id.*

When a question arises between two innocent parties, which of them shall suffer by the misconduct of another, the loss must fall upon him who has enabled the wrong to be committed, and not on him who had no means of knowing that it was a wrong: *Id.*

If the equitable owner of a thing has permitted another to hold the legal title, accompanied with the usual documentary evidence of it, with full possession and with declarations of ownership corresponding to the legal title, he cannot set up his equity against a *bonâ fide* purchaser, who had no notice of it: *Id.*

Secret instructions from the equitable to the legal owner, which produced no change in the apparent relation of the latter to the thing, will not affect the right of the purchaser: *Id.*

The burden of proof rests upon the equitable owner, to show that the purchaser had notice of his rights in due time: *Id.*

Where the purchase has been made for a full price and on fair conditions, without special advantage to the vendee, the proofs to impeach it ought to be more full and direct, more unequivocal and certain, than would be required in the case of a hard or unequal bargain: *Id.*

California Mining Rights—Registry—Discovery—Title—Claims under Mexican Grants—Act of 1851.—A mining right or privilege under the Mexican ordinances relating to that subject, is a title to land within the meaning of the Act of 1851, and therefore the Board of Land Commissioners had jurisdiction to investigate a claim to such right: *United States* vs. *Castillero.*

The ordinances made and established by the King of Spain at Madrid in 1783, prescribe the mode of acquiring titles to mines, and were in force throughout the Republic of Mexico at the date of the American conquest of California: *Id.*

A strict compliance with the terms and conditions of those ordinances is required by the ordinances themselves, and is shown to be necessary on general principles by all the writers on the subject: *Id.*

Registry is the basis of title to a mine, and no mine can be lawfully worked until it is registered; nor can any title thereto be acquired either by the discoverer or by any other person without a registry: *Id.*

Registry consists of an entry in a book kept by the proper public authority: *Id.*

Title to a mine is vested by the adjudication or decree of the proper tribunal in a case duly presented for decision, and by the registry of the adjudication, together with the proceedings on which it is founded: *Id.*

The mere fact of discovery without such adjudication and registry, gives no title to the discoverer, though it is also true that without proof of discovery there can be no adjudication in his favor: *Id.*

To complete the adjudication and carry it into effect, the boundaries must be fixed; else the title or claim, like other indefinite interests in lands, will be void for uncertainty; and this rule applies to mines situate on public as well as to those on private lands: *Id.*

Purchase-Money—Equitable Lien—Married Woman—Fraud.—Purchase-money is treated by Courts of Equity as a lien on the land sold where the purchaser has taken no separate security, and this is on the principle that one who gets the estate of another should not in conscience be allowed to keep it without paying for it: *Chilton* vs. *Braiden's Administratrix.*

This rule applies with as much force to the case of a purchase by a married woman as to any other case: *Id.*

The disabilities imposed upon married women are intended for their protection, and the law will not allow them to be used as the means of committing fraud: *Id.*

Federal Courts—Lien of their Judgments—Revisory Power of Supreme Court.—The power of the Supreme Court of the United States to revise the proceedings of a Circuit Court in a case brought up on a certificate of division is strictly confined to the questions stated in the certificate: *Ward et al.* vs. *Chamberlain et al.*

Judgments and decrees rendered in the Courts of the United States are liens upon the defendant's real estate in all cases where similar judgments or decrees of the State Courts are made liens by the law of the State: *Id.*

A decree for the payment of money in an admiralty suit *in personam* stands in this respect upon the same footing as a decree in equity: *Id.*

Judgments and decrees in equity, rendered by the State Courts of Ohio, are, by the laws of that State, liens upon lands; *therefore*,

Where one party filed his libel against another in the Federal District Court for Ohio, claiming damages by a collision of two vessels on the Lake, and got a decree *in personam* for money as compensation, the decree is a lien on the respondent's land: *Id.*

That lien gives the libellant a right to levy on the lands to which it attaches, and consequently such interest in the lands as will enable him to sustain a bill of discovery against the respondent and any third person who sets up an unfounded claim under a different lien: *Id.*

On such a bill, the respondent, if he makes out his case, is entitled to a decree which will remove the cloud from his title, but the Court cannot proceed further, and in the same case order the land to be sold for the payment of the debt found due by the original decree: *Id.*

Stare Decisis.—A question repeatedly argued and decided must be considered as no longer open for discussion, whatever differences of opinion may once have existed on the subject in this Court: *Wright et al.* vs. *Sill.*

Rights under State Laws—Jurisdiction of Federal Courts.—A controversy in which no right is claimed under the Constitution or laws of the United States, but which turns entirely upon the validity or interpretation of State Laws, is exclusively within the jurisdiction of the State Courts, and this Court has no appellate power over thier judgment: *Congdon et al., and Tennessee Mining Company* vs. *Goodman and Bledsoe.*

Res Adjudicata—Jurisdiction of Tribunal.—A controversy once decided by a competent tribunal, cannot be re-examined by another court of concurrent jurisdiction, in a suit between the same parties or their privies: *Lessee of Parrish* vs. *Ferris et al.*

The Statute of Ohio authorizes any person in possession of real property to institute a suit against any one who claims an estate or interest therein, adverse to him, for the purpose of determining such adverse estate or interest: *Id.*

The judgment of a Court, in proceedings under this statute, determines the merits of the plaintiff's title, as well as that of the defendant; and is conclusive whether adverse to one or the other: *Id.*

Inventor—Agreement to Perfect an Invention.—Parties engaging the

services of an inventor, under an agreement that he shall devote his ingenuity to the perfecting of a machine for their benefit, can lay no claim to improvements conceived by him after the expiration of such agreement: *Appleton* vs. *Bacon & North.*

Mortgage—Equity—Fraudulent Agreement—Statute of Frauds.—The owner of mortgaged land made "a friendly arrangement" with the mortgagee to buy it in, ostensibly for his own use, but with the understanding that he was to hold it for the use of the mortgagor, as if no sale had been made. This was done to defeat the claim of a third party; and with that view the mortgagor confirmed the sale. The mortgagee and purchaser afterwards claimed the land as his own. *Held*, That the mortgagor cannot sustain a bill in equity to restrain the mortgagee from selling the land, and to enforce the understanding made before the sale: *Randall* vs. *Howard.*

Neither party can enforce against the other a contract made between themselves to injure a third person, in fraud of the law: *Id.*

Nor will the character of such agreement be changed by showing that the claim of the third party, whose rights were to be affected by it, was also fraudulent: *Id.*

Where it appears on the face of a bill, that an agreement concerning an interest in lands set up by complainant is in parol, the defence of the Statute of Frauds may be taken advantage of on demurrer: *Id.*

Mortgage by Corporation—Seal—Authority of Officers—Directors and Stockholders—Legal and Equitable Mortgage.—An instrument purporting to be a mortgage, made by a corporation, is not a legal mortgage, and a bill to foreclose it as such cannot be sustained unless it be sealed with the corporate seal of the mortgagor: *Koehler* vs. *The Black River Falls Iron Company.*

The mere fact that such a mortgage-deed has the corporate seal attached to it, does not make it the act of the corporation if the seal was not affixed by a person duly authorized: *Id.*

The presumption is, that the seal was rightfully affixed to a deed, or other instrument, on which it appears; but that presumption is not conclusive, and may be repelled by parol evidence: *Id.*

Where it is proved that the officers who executed a mortgage did not seal it then nor afterwards; that the officer who had the seal in his custody never affixed it nor authorized another to do so, and that the

mortgage was recorded without a seal, the burden is thrown on the mortgagor to prove that it was properly sealed, and if he fails, the conclusion of law is, that the seal was wrongfully and fraudulently affixed: *Id.*

A mortgagor whose will seeks a foreclosure, on the sole ground that the mortgage is a legal one, cannot be decreed an equitable mortgagee, unless he files a new bill in which his equitable rights are set forth: *Id.*

The officers and directors of a corporate body are trustees of the stockholders, and in securing to themselves an advantage not common to all the stockholders, they commit a plain breach of duty: *Id.*

COURT OF APPEALS OF NEW YORK.[1]

Tax—Illegal Assessment—Equitable Jurisdiction to restrain Collection.—An action will not lie to restrain the collection of a tax, on the bare ground that the assessment was illegal. There must be, in addition, facts bringing the case under some acknowledged head of equity jurisdiction: *The Susquehanna Bank* vs. *the Board of Supervisors of Broome county et al.*

Bastardy—Recovery back of Money paid on erroneous Expectation.—Money paid by a person charged as the father of an unborn bastard to a superintendent of the poor, upon a compromise, under chapter 25 of 1832, may be recovered back upon its appearing that the supposed mother was not in fact pregnant: *Rheel* vs. *Hicks.*

It is no defence by the superintendent that he paid the money into the county treasury, no expense having been incurred in the support of the expected child or mother: *Id.*

Agreement—Damages for Non-Fulfilment.—One who has agreed to build a house on the land of another, and has substantially performed his contract, but has not completely finished the house nor delivered it when it is destroyed by fire, is liable to an action for money advanced upon the contract and damages for its non-perfermance: *Tompkins et al.* vs. *Dudley et al.*

Contract—Sale—Title to Goods Sold—Notice—Chattel Mortgage—Parol Evidence.—A brewer sold "sufficient barley now in my brewery to make malt enough, to be made in the brewery, to pay" a sum then advanced by the plaintiff, to whom a delivery was made of a specific mass of barley more than enough for the payment. The plaintiff did not

[1] From 11 E. P. Smith's Reports.

remove it, but it remained until the brewer sold his brewery and the contents, with notice of the facts and subject to the plaintiff's claim. The purchaser sold the barley to the defendant, and by his direction put it upon a railroad for transportation to the latter. *Held:*

1. The legal title and general ownership of the barley passed to the plaintiff. The transaction was an executed sale, in the nature of a mortgage: *Wooster et al.* vs. *Sherwood.*

2. The purchaser with notice had no title as against the plaintiff and could convey none to the defendant, although the latter bought without notice: *Id.*

3. The apparent authority of the defendant's vendor, not having been conferred by the plaintiff, nor with his knowledge or assent, the defendant is not within the rule protecting, as a *bonâ fide* purchaser, him who deals with one to whom the real owner has given the *indicia* of power to sell: *Id.*

4. As against the defendant, the transfer was valid, without filing as a chattel mortgage: *Id.*

Whether a demand is necessary to sustain an action for the conversion of the barley, *quære;* if it were, one made on the carriers engaged in transporting it is sufficient: *Id.*

Parol evidence, it seems, is admissible, in addition to the written contract of sale or mortgage, that, by the agreement of the parties, the brewer was not to sell the barley delivered under the contract, or malt made from it, without the plaintiff's permission: *Id.*

Sheriff—Action against for not making the Money on an Execution.—A sheriff levied on goods: left them with a receiptor, who claimed to be, and was, the owner, and not delivering them, the sheriff recovered judgment for their value. In an action by the plaintiff in the execution, the sheriff is estopped from showing that the goods did not belong to the judgment debtor: *The People, ex rel. Knapp et al.*, vs. *Reeder, Sheriff, et al.*

The fact offered in evidence does not exonerate the sheriff, because he had the benefit of an estoppel against the receiptor on the question of title, which enures to the plaintiff in the execution, and his failure to collect it resulted, not from the fact that the title to the goods was not in the judgment debtor, but from the insolvency of the receiptor: *Id.*

Mortgage—Purchaser at a Mortgage Sale under Void Foreclosure—

Tacking Rent to the Mortgage.—The purchaser at a mortgage sale under an attempted statutory foreclosure, void as against the mortgagor for want of notice, stands as an assignee of the mortgage: *Robinson* vs. *Ryan et al.*

It seems that this is sufficient evidence of his title, in a foreclosure suit by such assignee to which the mortgagee is not a party, as against a grantee of the land, subject to the mortgage: *Id.*

The land was subject to re-entry for non-payment of rent due on a lease in fee. The mortgagee had covenanted with the mortgagor to pay such rent to the landlord; but the mortgagor, by a subsequent agreement with the mortgagee, assumed the payment of such rent: *Held*, that, as against grantee with notice of the agreement, the assignee of the mortgage was entitled to pay the rent to protect his interest; to tack the amount to his mortgage, and to foreclose as for a sum immediately payable, though no part of the principal was due on the mortgage: *Id.*

Judgment under the Code must be based on the Pleadings.—A judgment under the Code (§ 274) must, as before, be based upon the pleadings, and is not to be given in favor of a defendant for a cause of action which he has not set up by way of defence or counter-claim: *Wright* vs. *Delafield et al.*

The complaint sought to restrain the prosecution of actions pending against the plaintiff on notes given for the purchase of land, on the ground of defects of title, and prayed that the defendant might be required to make a good title and convey. There was a pure defence, which prevailed. *Held*, that the complaint should have been dismissed, and a judgment for the defendant for the amount of the notes was reversed: *Id.*

Fences—Adjoining Owners—Prescription to maintain Fences.—There may, it seems, be a valid prescription binding the owner of land to maintain perpetually the fence between him and the adjoining proprietor: *Adams* vs. *Van Alstyne.*

In such a case, the fence-viewers have no jurisdiction under our statutes: *Id.*

The maintenance of a fence by one of the adjoining proprietors exclusively for more than twenty years, when he might have compelled the other to maintain part, warrants the presumption of a grant or covenant compelling him to do so: *Id.*

But no such prescription can be established in respect to part of a boundary line by the maintenance for any length of time, since our statutes requiring fencing, of the fence thereon by one of the adjoining proprie-

tors, while the other maintained an equal length on another portion of the boundary: *Id.*

The presumption in such case is that each maintained what had been found by agreement to be his just proportion of the fences, in discharge of his own duty, and not in exoneration of the other: *Id.*

Such a division, it seems, is binding upon the parties while they remain conterminous possessors; but new obligations arise when, by subdivision, or otherwise, there is a change in the extent to which one of the adjoining proprietors borders upon the other: *Id.*

The statute empowering fence-viewers to fix the just proportion of fence to be maintained refers to the state of things existing when they are called upon to act, and has no relation to any former ownership of the adjoining possessions: *Id.*

Judgment Confessed—Motion to Cancel—Conclusiveness of Order.—Upon an application to the court, by motion, to cancel a judgment entered upon confession without action as having been paid, the court may order a reference to ascertain the facts: *Dwight* vs. *St. John.*

The order of the court denying such motion made upon full proofs, and appealable as affecting a substantial right, is conclusive between the parties: *Id.*

After such an order, the plaintiff in the judgment brought an action for the purpose of having the judgment declared to stand as security for another debt not mentioned in the sworn statement upon which it was entered, and to have such statement amended in accordance with the intent and agreement of the parties as alleged by him, but denied upon oath by the defendant: *Held*, that while the defendant was concluded by the adjudication upon the motion, in effect that the judgment should stand as security for such further debt, yet the plaintiff could have no affirmative relief: *Id.*

SUPREME COURT OF NEW YORK.[1]

Guaranty of a Promissory Note.—Where a guaranty of a promissory note is a separate instrument from the note, title to it will pass by delivery with the note, for a good consideration. A written assignment is unnecessary: *Gould* vs. *Ellery.*

Construction of Will.—A testator directed the residue of his estate to be divided between his brother W., and the children of his deceased

[1] From the Hon. O. L. Barbour; to appear in the 39th volume of his Reports.

sister, E., and the daughter of his brother J., in equal proportions. *Held*, that a decree of the Surrogate, directing a distribution to be made among the legatees *per capita*, giving each of the nephews and nieces an equal share with W., applied the correct rule of distribution: *Lee, Ex'r.*, vs. *Lee.*

Agreement—Principal and Surety.—C. applied to the plaintiffs to be supplied with gas-light and meter on certain premises, and agreed to pay for the same on the usual terms; E. signing the application as surety. Subsequently E. ceased to be the occupant of the premises, and W. became his successor. *Held*, that E. was liable only for the gas and meter supplied to C. on the premises named, on the default of C., and not for gas furnished to W. after he became the tenant. And that a request to notify the plaintiff of the change of proprietorship would not render the surety liable for gas furnished to W.: *The Manhattan Gas Light Company* vs. *Ely.*

Promissory Note—Statute of Limitations.—A promissory note, given to a Mutual Insurance Company, for shares of its capital stock, and in terms payable in such portions, and at such time or times, as the directors of the Company may require, and showing on its face that it was given for capital stock of the Company, is, in legal effect, payable on demand, *i. e.* at its date: *Colgate* vs. *Buckingham.*

The Statute of Limitations begins to run against such a note at the time it is given, and, at the end of six years from that time, will constitute a good defence: *Id.*

Principal and Agent—Banks.—An agent, acting under a general power of attorney giving him power to draw or indorse checks for and in the name of his principal, has no authority to overdraw his principal's account at the bank: *The Union Bank* vs. *Mott.*

And if over-drafts are made upon such account, by the agent, through a fraudulent collusion with a book-keeper in the bank, without the knowledge or sanction of his principal, who receives no part of the proceeds, the loss must fall upon the bank; such loss having been occasioned by the fraud of its own clerk and servant, in the performance of his duties in the bank: *Id.*

Right of Action—Receiver.—The claim for dividends improperly declared by an insolvent banking corporation, belongs to creditors, and not

to the receiver. The right of action is in them, and the receiver cannot collect such moneys for the benefit of stockholders: *Butterworth* vs. *O'Brien.*

Nor is it a cause of action that such dividends were paid to persons who were indebted to the bank: *Id.*

Where, in an action by the receiver, against the former president of a bank, the complaint alleged that the defendant used fictitious notes in lieu of money of the bank, which he fraudulently used and disposed of, and that such notes were among the assets of the bank; *held*, that these facts, if proven, would be sufficient to put the defendant on his defence; and that the claim was one which belonged to the receiver, and might be collected by him: *Id.*

Check—Demand of Payment.—A creditor who has received from his debtor a check upon a bank, cannot return the same to the drawer, and sue on the original cause of action, without having first demanded payment: *Bradford* vs. *Fox.*

Presenting a check to the bank to be certified, is not equivalent to a demand of payment; and the refusal of the bank to certify it will not excuse the holder from presenting it for payment: *Id.*

Husband and Wife.—A married woman can charge the whole or a portion of her separate estate as a surety for her husband, the intention to charge such separate estate being declared in the contract: *Barnett* vs. *Lichtenstein.*

And although the instrument by which she promises to pay the debt of her husband out of her separate estate declares that the consideration is for the benefit of her separate estate, instead of stating the real consideration, this will not vitiate the instrument, nor exempt the wife's separate estate, provided she expressly charges her separate estate in the instrument: *Id.*

Action for False Imprisonment—Damages in—Who is liable in—Plea of Justification.—In an action for false imprisonment, the jury has a right to give damages beyond a mere compensation to the plaintiff for his injuries, and inflict a punishment upon the defendant for his conduct; but not to an arbitrary amount. In this case $2000 were held excessive damages: *Brown* vs. *Chadrey.*

SUPREME COURT OF MASSACHUSETTS.[1]

Promissory Note—Signing after Delivery.—One who signs as a principal promissor a promissory note which has already been delivered and accepted, is not liable thereon without independent proof of a new consideration: *Green* vs. *Shepherd.*

Promissory Note—Consideration—Policy of Insurance.—The issuing of a policy of insurance by an insolvent insurance company is a good consideration for a promissory note given for the premium, if the insolvency of the company was not known by its officers or agents at the time: *Lester* vs. *Webb.*

It is no objection to the validity of a note given to a foreign insurance company for the premium on a policy of insurance, to allege and prove that the capital stock, to the amount of one hundred thousand dollars, had not been paid in and invested as required by St. 1854, c. 453, § 31; or that the company have neglected to appoint a general agent, under § 32 of the same act, unless notice to do so has been given to them by the treasurer of the Commonwealth: *Id.*

Assignment—Title of Assignee to Goods in hands of Assignor.—An assignment under the insolvent laws does not vest in the assignees property which has been put into the hands of the debtor for the fraudulent purpose of giving him a false credit, although some of his creditors may have been defrauded thereby: *Audenried* vs. *Betteley.*

Award—Uncertainty of Amount.—An award is not valid which provides for the payment, by one of the parties to the submission, of a certain sum, after making deductions therefrom of sums not fixed by or capable of being ascertained from the award: *Fletcher* vs. *Webster.*

Indictment—Judgment on one Count.—A judgment rendered on a verdict of guilty upon one count of an indictment which contained several counts, and a sentence passed thereon, will not be reversed on a writ of error, although there was no finding by the jury as to one of the other counts: *Edgerton* vs. *The Commonwealth.*

Equity—Bill to set aside Fraudulent Deed.—A bill in equity lies to set aside a deed procured by fraud, if the estate of the grantee therein is postponed until the death of a person who is yet living: *Martin* vs. *Graves.*

Equity—Bill to redeem Mortgage—Practice.—If a bill in equity to

[1] From Charles Allen, Esq., Reporter; to appear in volume 5 of his Reports.

redeem land from a mortgage, and requiring an answer under oath, has been dismissed, upon motion of the plaintiff, and without the knowledge of the defendant, after the filing of the answer, and after the expiration of the time when, by the rules of the court, the plaintiff was entitled to file a replication and take testimony, the decree for the defendants is conclusively presumed to be upon the merits, and is a bar to a subsequent bill for the same cause, brought by the same plaintiff, or by one who acquired his title *pendente lite*: *Borrowscale* vs. *Tuttle*.

Marriage—Good consideration for grant of Land.—A legal contract and promise of marriage made in good faith by a woman to one who has executed to her a deed of land, for the purpose of inducing her to marry him, furnishes a good consideration for the deed; and she will be entitled to hold the land against his creditors, although the marriage is prevented by his death: *Smith* vs. *Allen*.

Married Woman—May belong to trading Partnership.—A married woman may belong to a trading partnership, so as to be bound by a promissory note given in the partnership name, if her husband is not a member thereof: *Plumer* vs. *Lord*.

If a married woman is not authorized by law to become a member of a firm, or to bind herself by its contracts, she is not estopped from availing herself of the defence of coverture to an action upon a promissory note of the firm, by representations made to the plaintiff before the note was given that she was a member thereof: *Id*.

Married Woman—Separate Estate of Insane—Equitable Application of her Income to her own Support.—If a bill in equity is brought by the husband and guardian of an insane woman, against the trustee under a marriage settlement, to obtain an order for a contribution from the income of the trust property which is secured to her sole and separate use, to aid in her support, the court will appoint a guardian *ad litem* for her, before hearing the case: *Davenport* vs. *Davenport*.

This court has jurisdiction in equity to require the trustee of the property of a married woman who has become insane, the income of which is secured to her sole and separate use by a marriage settlement, to pay over to her husband and guardian such portion of the income as may be reasonable, to aid in her support: *Id*.

Sale of Personal Property—Constructive Delivery.—Plucking a handful of half-grown grass and delivering it to a purchaser in the field, upon

a sale of the grass with an agreement that the vendor shall cut it at the proper time, is not a constructive delivery of the hay as a chattel, which will pass a title to it, as against third persons: *Lamson* vs. *Patch.*

Mortgage of Personal Property of a Hotel—Sail-boat may be included—Act of Congress of July 29, 1850.—A mortgage of personal property, conveying a list of articles used in and about a hotel, "together with all other goods, effects, furniture, chattels, property, things of every name and nature now used, attached, situate and being in or about the hotel," will embrace a schooner rigged sail-boat, which is upon the water near the hotel, and used in connection with it, although four other schooner rigged sail-boats are specially mentioned in the mortgage: *Veazie* vs. *Somerby.*

The St. of U. S. of 1850, c. 27, requiring conveyances of ships and vessels of the United States to be recorded by the collector of customs, applies only to ships and vessels which have been enrolled, registered, or licensed under the laws of the United States: *Id.*

Courts of another State—Presumption in favor of Jurisdiction.—The legal presumption, in the absence of evidence to the contrary, is in favor of the jurisdiction of a Court of record of another State, which has assumed to exercise jurisdiction over a subject-matter in controversy between parties residing there: *Buffum* vs. *Stimpson.*

Under an order of a Court of record of another State that certain property shall be discharged from a mortgage thereon, upon the filing in Court within a specified time of a bond, with sureties to be approved by the clerk, and with condition to pay the sum, if any, which should be found due upon the mortgage debt, a duly certified record of the Court which shows that within the specified time a bond was received and placed on file by the clerk, and that subsequent proceedings were had which necessarily implied an approval and acceptance of the bond, is sufficient to prove the discharge of the property from the mortgage: *Id.*

Mechanic's Lien—Entire Contract for Labor and Materials.—If labor and materials have been furnished and used in the erection of a building, under an entire contract, with no stipulation for any separate price for either, and it is impossible to determine what part of the contract price is to be applied to either, and there is no mechanic's lien for the whole, there can be none for any part: *Morrison et al.* vs. *Minot.*